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Pacific Region

Région Pacifique

Regional Director General

Directeur Régional Générale

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2019-009-00091
EKME #: 4017270

MEMORANDUM FOR THE DEPUTY MINISTER

**BACKGROUND MATERIAL FOR SRKW INDIGENOUS AND MULTI-
STAKEHOLDER ADVISORY GROUP
(FOR INFORMATION)**

SUMMARY OF ADVICE TO DEPUTY MINISTER

This note provides background information for two upcoming meetings regarding Southern Resident Killer Whales (SRKW)—both on February 11, 2019 in Vancouver, BC; material has been drafted in coordination with Environment and Climate Change Canada (ECCC), Transport Canada (TC):

- the SRKW Indigenous and Multi-Stakeholder Advisory Group (IMAG); and
- your meeting with the Deputy Ministers of ECCC, TC and environmental non-governmental organizations (ENGOS).

Specifically, this package includes:

1. Scenario note for the IMAG meeting;
2. Draft agenda for the IMAG meeting;
3. Backgrounder (Critical Path documents) on the SRKW Technical Working Groups;
4. Summary of Washington State bills (legislative proposals) related to SRKW - *measures related to DFO's mandate only (TC and ECCC will be providing separate material for proposals related to their respective mandates); and*
5. Scenario note for the Deputy Minister's meeting with ENGOS.

Rebecca Reid

Regional Director General, Pacific Region

Attachments (5):

- 1) Scenario note for the IMAG meeting (EKME #: 4017308)
- 2) Draft agenda for the IMAG meeting (EKME #: 4017294)

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- 3) **Backgrounder (Critical Path documents) on the SRKW Technical Working Groups (EKME #: 4017297)**
- 4) **Summary of Washington State bills (legislative proposals) related to SRKW - measures related to DFO's mandate only (TC and ECCC will be providing separate material for proposals related to their respective mandates) (EKME #: 4017307)**
- 5) **Scenario note for the Deputy Minister's meeting with ENGOs. (EKME #: 4017289)**

**Pages 3 to / à 6
are not relevant
sont non pertinentes**

Washington State Legislation relating to Habitat and Forage Fish

Overview of Bill(s):

- **Senate Bill 5580:** An act relating to implementing recommendations of the southern resident killer whale task force related to increasing habitat and forage fish abundance
- **House Bill 1579:** An Act Relating to implementing recommendations of the southern resident killer whale task force related to increasing Chinook abundance

Status in Legislative Process

- Senate Bill In Committee (As of Tuesday, February 5, 2019)
- House Bill in executive Scheduled for executive session in the House Committee on Rural Development, Agriculture, & Natural Resources

Key Elements

- Enforcement and protections related to the hydraulic code. For example, the bills propose hydraulic project¹ approvals and change the civil penalty for violations of the hydraulic code from \$100 per day per violation to \$10,000 per violation
- Removes the requirement that the Department of Fish and Wildlife (DFW) issue permits with or without conditions for single-family residential bulkheads and rock walls (note: this will help protect fish and shellfish habitat)
- Removes bass, channel catfish, and walleye from statutory classification as game fish (note: these are predatory fish species that prey upon or compete with Chinook)
- Requires a fishing license to fish for smelt (note: smelt are a prey species for Chinook).

Links to Canada

- There are a range of other measure being considered for implementation in Canada that would be may primarily through FM related decisions and not through legislation i.e. through annual IFMP process
- Amendments to the Fisheries Act under bill C-68 proposed to establish Standards and Codes of Practice for:
 - The avoidance of death to fish and harmful alteration, disruption or destruction of fish habitat;

¹ Hydraulic project approval (HPA) is required prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. HPAs are issued to ensure proper protection of fish life.

- The Conservation and protection of fish or fish habitat; and
 - The prevention of pollution
- The measures within this bill will be the subject of consideration at the SRKW Prey Technical Work Group.

Other Considerations

- There are a number of additional bills that have been submitted to the legislature that relate to SRKW. These include measures relating to :
 - phasing out nontribal harvest of salmon in favor of mark selective harvest techniques (Senate Bill 5617)
 - calling on the state to seek feedback from a wide array of affected tribes and other parties before deciding on an appropriate course of action to address pinniped predation of salmon. (House Bill 1824)
- However, as these bills were not introduced by the Governor, the linkage to the TF Recommendations may be limited and it is less likely they will be adopted.



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Approved by Rebecca Reid, RDG
Pacific Region

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SCENARIO NOTE FOR THE DEPUTY MINISTER

MEETING WITH SOUTHERN RESIDENT KILLER WHALE INDIGENOUS AND MULTI-STAKEHOLDER ADVISORY GROUP

Date and Location of Meeting

February 11, 2019, Simon Fraser University (Harbour Centre), 515 W Hastings St. Vancouver, British Columbia.

Attendees

The Southern Resident Killer Whale (SRKW) Indigenous and Multi-stakeholder Advisory Group (IMAG) consists of representatives from Indigenous groups, Non-Governmental Organizations (NGO); the shipping and marine transportation, fishing, and whale watching sectors; the Government of British Columbia, Metro Vancouver Regional District and coastal municipalities.

Please see attached Annex A for a list of IMAG members.

Stakeholder Objective

- Indigenous Groups and stakeholders will seek to engage with the federal government on the status of recovery measures to support the recovery of SRKW. In particular they will seek to provide feedback and input into the process for implementing recovery measures and to understanding how these measures might impact their particular interests (i.e. Aboriginal Rights, socioeconomic impacts, conservation).

Departmental Objective


- Overall, the Department's objective is to update IMAG members on the status of federal efforts underway on immediate and long-term actions to support the recovery of SRKW.
- In particular, this meeting will provide an opportunity to update the group on the progress made by the five technical working groups (TWG) being led by the federal departments (DFO, TC and ECCC), and allow IMAG members to provide feedback on the TWG process and raise concerns they may have.
- Other updates will include an overview presentation on the Washington State Orca Task Force final recommendations, the state legislative process, and how that work aligns with recovery efforts in BC.

Key Points to Register

- **The Government of Canada is committed to the recovery of the Southern Resident Killer Whale population and has made significant and unprecedented investments to better understand the threats they face and to implement recovery measures in both the immediate and longer-term.**
- **Federal departments are working together to address the three key threats faced by Southern Resident Killer Whale population which include: Prey Availability, Acoustic and Physical Disturbance, and Contaminants.**
- **Through the Technical Working Group process, the Federal Government is working collaboratively with Indigenous and stakeholder groups to develop measures for immediate action and implementation by the Spring (May 2019) when the Southern Resident Killer Whale frequent coastal waters.**
- **Key milestones will include recommendations from the Technical Working Groups by March 1, 2019, further consultation with Indigenous groups and stakeholders in March and April, and decisions on new measures recovery measures by May 2019.**
- **We will carefully consider how to implement recovery measures in a way that mitigates potential impacts to indigenous rights and reduces socio-economic impacts for stakeholders and coastal communities.**

Considerations

- Stakeholders, including commercial and recreational fishing, whale watching, the broader tourism sector, and local municipal governments have expressed significant concerns that measures being contemplated to protect the SRKW could have a negative socio-economic impact on their sectors. They are also concerned that the potential benefits of proposed measures are uncertain or unlikely to result in near term benefits for SRKW. This means that government could be subject to criticisms about the merits of measures being implemented.
- Many Indigenous groups have a strong interest in participating in implementation of recovery measures for SRKW, and concerns about the potential impacts of such measures on Aboriginal and Treaty rights to fish. For example, the Pacheedaht and Ditidaht Nations on the west coast of Vancouver Island, along with several other bands have hired legal counsel to inform their approach to consultations with the government.

- 
Maa-Nulth Treaty Nations' judicial review seeking to quash the Government of Canada's recent decisions related to protecting additional areas of critical habitat in the waters off Southwestern Vancouver Island. In part, the judicial review asserts that Ministers breached consultation requirements. Maa-nulth and other Indigenous groups

have also challenges the *process* used to identify new areas of critical habitat (e.g., expedited timelines, insufficient consideration of Indigenous Traditional Knowledge).

- The National Energy Board's reconsideration of the TransMountain Pipeline expansion (TMX) is occurring concurrently, and many Indigenous groups and stakeholders are also closely involved in that process, either as intervenors, or through consultations this Spring. Many groups are of the opinion that the implementation of recovery measures for SRKW is closely linked to the TMX process.

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the Maa-Nulth Treaty Nations review, which claims the efforts to expand critical habitat are ultimately linked to efforts to implement TMX.

Background

- In June 2018, the Indigenous and Multi-Stakeholder Advisory Group (IMAG) was established to bring together Indigenous groups, multiple stakeholders, and implicated jurisdictions to facilitate communication and coordination of activities to recover SRKW. On October 31, 2018, the Government announced additional measures to further protect SRKW, including commitments for "immediate measures" to be in place for May 2019.
- The SRKW Indigenous and Multi-stakeholder advisory group last met on November 1, 2018 in Vancouver for a half-day meeting to discuss the federal the government's October 31 announcement of additional measures to further protect SRKW, including commitments for "immediate measures" to be in place for May 2019.
- To support the implementation of these measures, federal departments have convened five Technical Working Groups (TWG) focused on the following areas:
 - Prey availability and accessibility (DFO);
 - Identification/development of proposed SRKW sanctuaries (DFO);
 - Vessel noise measures related to Large Commercial Vessels (TC);
 - Additional vessel noise measures (TC); and
 - Contaminants (ECCC).
- These TWGs have been established based on consideration of key threats, announced measures, and potential future measures.
 - A primary objective of the TWGs will be to deliver concrete proposals by March 1, 2019 for action in the near-term (i.e. by May 2019) as well as planning longer term measures to support SRKW recovery.
 - All TWGs will consider Canada-U.S. collaboration in support of their recommendations, with an immediate focus on the Washington State SRKW Task Force process and recommendations.
- The TWGs represent a wide range of viewpoints from Canada's key partners, including Indigenous and coastal communities, academia, industry and Environmental Non-Governmental Organizations.

Follow Up (For Deputy Minister's use only)

Annex A

Sector	Name	Position	Affiliation	E-mail
Indigenous representatives	Teresa Ryan	Researcher	UBC	teresa.ryan@ubc.ca
	Ray Harris	Co-chair	First Nations Summit	
	Hugh Braker	FNFC delegate – WCVI	FNFC	HBraker@tseshaht.com
	John Henderson	FNFC delegate – North Island	FNFC	siriohnh55@gmail.com
	Larry George	FNFC delegate – South Island	FNFC	Larry.George@cowichantribes.com
NGOs	Misty MacDuffee	Wild Salmon Program Director	Raincoast Conservation Foundation	misty@raincoast.org
	Christianne Wilhelmson (Alt: Rachael Merrett)	Executive Director	Georgia Strait Alliance	christianne@georgiastrait.org
	Hussein Alidina	Oceans Conservation Lead	WWF Canada	Halidina@wwfcanada.org
	Jeffery Young	Senior Science and Policy Analyst	David Suzuki Foundation	jyoung@davidsuzuki.org
	Michael Jasny (Alt: Dr. Scott Wallace)	Director, Marine Mammals	Natural Resources Defence Council	miasny@nrdc.org
	Dr. Lance Barrette-Lenard	Director of Marine Mammal Research Program	Vancouver Aquarium [Oceans Wise / CORI Team]	
Shipping Industry	Carrie Brown (Alt: Orla Robinson)	Director of Environmental programs	Port of Vancouver	Carrie.Brown@portvancouver.com
	Sonia Simard	Director of Legislative and Environmental Affairs	Shipping Federation of Canada	ssimard@shipfed.ca
	Denien Ford	Policy and Projects	Chamber of Shipping	
	Leslie James	Environmental Manager	Canadian Ferry Association	
Fishing Industry	Gerry Kristianson	Chair	Sport Fishing Advisory Board	Kiva1@telus.net
	Rob Morley	West Coast Representative	BC Seafood Alliance	rob.morley@canfisco.com
Whale Watching	Alan MacGillivray	Canadian President	Pacific Whale Watching Association	alanmcgillivray@shaw.ca
Provincial Government	Mark Zacharias	Deputy Minister	Ministry of Environment and Climate	Mark.Zacharias@gov.bc.ca

			Change Strategy	
	(Alt: Jennifer McGuire)	Assistant Deputy Minister	Environmental Sustainability Division	Jennifer.McGuire@gov.bc.ca
Municipal Government	Dr. Andjela Knezevic-Stevanoivic	Director, Environmental Management & Quality Control, Liquid Waste Services	Metro Vancouver Regional District	andjela.knezevic-stevanovic@metrovancover.org
	Josie Osborne	Mayor, District of Tofino	Association of Vancouver Island Coastal Communities	osborne@tofino.ca



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SOUTHERN RESIDENT KILLER WHALES INDIGENOUS & MULTI-STAKEHOLDER ADVISORY GROUP (IMAG)

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DRAFT AGENDA

February 11, 2019 | 1:00pm-4:30pm

Location: Simon Fraser University (Harbour Centre), Room# TBC

515 W Hastings St, Vancouver, BC V6B 5K3

Conference Call: 1-877-413-4782 | Access: [REDACTED]

Meeting Objectives:

- Update on federal initiatives and potential management measures for SRKW recovery;
- Update and discuss progress on the SRKW Technical Working Groups (e.g. process, timelines, next steps); and
- Review and discuss WA State Orca Task Force recommendations and considerations for Canada.


Item	Time	Agenda Item & Description	Materials	Presenter(s)
1	1:00 - 1:15PM	Welcome and Opening Remarks		S. Lapointe
2	1:15 - 1:45PM	Update on Departmental SRKW Initiatives		Deputy Minister(s) from DFO, TC and ECCC ¹
3	1:45 - 2:30PM	Update and Discussion re: SRKW Technical Working Groups (TWGs)	PowerPoint Presentations	A. Thomson TWG Chairs
4	2:30 - 3:30PM	Washington State Orca Task Force Recommendations and State Initiatives <ul style="list-style-type: none">• Roundtable Discussion	PowerPoint Presentation	P. Becker (WDFW) - tbc
5	3:30 - 4:00PM	Prey Availability: Pacific Salmon Outlook for 2019		DFO-TBC
6	4:00 - 4:20PM	Looking Ahead: Next Steps for IMAG and Management Measures for 2019		A. Thomson
7	4:20 - 4:30PM	Closing Remarks		S. Lapointe

¹ Note: the proposal here was for DM's (or the senior Departmental rep) to each provide 5-10 min overview of work underway in their respective Departments related to SRKW. Would be at a high-level and supported by speaking points from officials.



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SCENARIO NOTE FOR THE DEPUTY MINISTER

Meeting with environmental non-governmental organizations (ENGOS) regarding Southern Resident Killer Whales (SRKW).

Date and Location of Meeting

- February 11, 2019 (Vancouver, B.C.) (meeting location, tbc)

Attendees

- **External (ENGOS):** Christianne Wilhelmson* (Georgia Strait Alliance); Jeffery Young* (David Suzuki Foundation); Jay Ritchlin (David Suzuki Foundation); Michael Jasny* (NRDC); and Misty MacDuffee* (Raincoast Conservation Foundation). (* indicates member of the Indigenous and Multi-Stakeholder Advisory Group, IMAG).
- **Officials:** Sylvie Lapointe (DFO); Michelle Sanders (TC); Christina Paradiso (ECCC).

Stakeholder Objective

- The primary ENGO objective for the meeting is to maintain pressure on the federal government in terms of the protection and recovery of SRKW.
- They will also look for an update on federal initiatives related to SRKW, including the newly-created SRKW Technical Working Groups (TWGs) and the development of management measures for 2019 (and beyond).

Government of Canada Objective

- The overall objective for this meeting is to emphasize the Government of Canada's ongoing commitment to protecting and recovery SRKW, as well as highlight significant steps in this regard, including efforts under the Whales Initiative and additional measures announced on October 31, 2018.
- An ideal outcome from this meeting would be ENGO support for the work being led by the three federal Departments (DFO, TC and ECCC) related to SRKW, as well as their continued engagement in both the Indigenous and Multi-Stakeholder Advisory Group (IMAG) and the SRKW Technical Working Groups (TWGs).

Key Points to Register

- **Government of Canada commitment to protect and recover Southern Resident Killer Whales:**
 - The Government of Canada is committed to the protection, survival and recovery

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- of the iconic and culturally significant Southern Resident Killer Whale.
- Over the last two years, the Government has taken significant action to address key threats to Southern Resident Killer Whales, including a further investment of \$61.5 million to help these whales survive and recover, building on the \$167 million identified in Budget 2018 dedicated to protecting endangered whales (Whales Initiative).
- We know there is more work needed and we are committed to continuing our efforts in close collaboration with your organizations.
- **ENGO engagement in federal SRKW processes and initiatives**
 - We appreciate the ongoing commitment of your organizations to protecting and recovering SRKW.
 - We also value your continued engagement in both the Indigenous and Multi-Stakeholder Advisory Group and the new Technical Working Groups.
 - Your participation in these groups will be key to informing and delivering a broad range of recovery measures for 2019 and beyond.
- **Consideration of Washington State measures**
 - Our three Departments are working closely with our U.S. colleagues, including Washington State, to track progress on their various SRKW initiatives, including proposals being considered through the Washington State legislative process.
 - The Technical Working Groups have also been asked to consider work underway in the U.S. and opportunities for potential alignment in Canada.

Considerations

- The protection and recovery of species at risk, including SRKW, is a strategic priority for the Government of Canada. Given the iconic status and high-profile of SRKW, federal protection and recovery measures have taken on significant importance for Indigenous groups, stakeholders (including the ENGOs) and the public. Many groups have linked the Government's recovery efforts for SRKW to the Trans Mountain Expansion (TMX) Project.
- Over the past year, Deputy Ministers have met regularly with the five ENGOs (and their legal counsel, EcoJustice) on the implementation of measures to protect and recover the SRKW. These meetings have covered a range of topics including critical habitat, salmon fishery closures implemented in 2018, the contribution of whale watching vessels to the threat of disturbance, and the establishment of IMAG and the new Technical Working Groups.
- The ENGOs provided significant input into the structure and mandate of the TWGs, and are well-represented on the TWGs, as well as IMAG.
- TWGs are expected to provide advice to Deputy Ministers on potential accommodation measures for the 2019 season by March 1, 2019. Advice on longer-term measures is expected by June 2019 (see attached critical path documents).
- Given that critical habitat for SRKW spans Canadian and U.S. waters, it will be

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- The SRKW TWGs have been mandated to review and consider activities in US waters, including opportunities for collaboration and (where appropriate) alignment in Canada.
- In parallel to the work of the TWGs, DFO, TC and ECCC will be consulting directly with Indigenous groups whose rights may be affected by the recovery actions being contemplated. Letters will be going out shortly to invite Indigenous groups to engage directly with the three lead Departments via a “single window” consultation team.